IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.631 of 2007

Smt.Sangeeta Kalyanrao Kale .... Appellant

(Orig.Plff)

V/s

1. Venture Steel, Pune
2. Yeshwant Tukaram Nagane
3. Tukaram Masu Mane
4. Mahadev Mallikarjun Dethe ... Respondents

(Orig.Defts)

Shriniwas S. Patwardhan for Appellant

Shri Umesh R. Mankapure for Respondent

CORAM:S.R.SATHE,J.

DATED:14/8/2007

P.C.:-

1. Heard finally at admission stage.

2. Appellant original plaintiff whose application for temporary injunction for restraining defendants from executing decree passed in Special Civil suit No.22 of 2002 was rejected, has filed the present appeal.

3. It is the case of the appellant plaintiff that since 21-4-2001 she is a director and share holder of Chandrabhaga Dairies Pvt. Ltd. Co. Previously original defendant nos.2 to 4 were share holders and directors of the said company. However, they tendered resignation on 21-4-2001. Plaintiff purchased major portion of shares. The defendant no.1 partnership firm filed suit against the present defendant nos.2 to 4 on 26-2-2002 for recovery of the amount of Rs.5,90,000/- from Chandrabhaga Dairies Pvt. Ltd. and the said suit was decreed in favour of the present defendant no.1 on 20-9-2005.

4. On the basis of the decree, the present defendant no.1 filed Darkhast i.e. Special Execution proceedings NO.37 of 2005. In that execution proceedings plaintiff filed application Exh.32 and contended that the plaintiff in the said suit has obtained the decree in collusion with the defendant nos.2 to 4 and the same is not binding on the present plaintiff and company. After hearing the parties the Executing Court rejected the application of the present appellant plaintiff. Hence she filed Regular Civil Suit NO.92 of 2006 in the Court of the Civil Judge, S.D., Pandharpur for a declaration that the decree passed in Special Civil Suit No.22 of 2002 on 20-9-2005 is not binding on her and plaintiffs in the said suit are not entitled to recover the amount.

5. The Appellant plaintiff also filed an application for temporary injunction and prayed that the execution in Special Dakrhast NO.37 of 2005 be stayed till the disposal of the present suit.

6. The said application was strongly opposed by the defendant no.1 i.e. plaintiff in Special Civil Suit NO.22 of 2002 and contended that the defendant no.1 company was properly served and decree passed against the company is legal and valid. On the date of filing of the suit the names of the defendant nos.2 to 4 were shown as directors. Present suit is not filed by the company but by one Sangeeta Kale in her individual capacity and as such she is not entitled for temporary injunction as prayed and balance of convenience is not in her favour.

7. After hearing the arguments of both the learned Advocates the learned trial Judge rejected the plaintiff's application. Being aggrieved by the same the plaintiff has filed the present appeal.

8. In this appeal before me, Shri Patwardhan, learned Advocate for the Appellant plaintiff submitted that decree passed in Special Civil Suit NO.22 of 2002 was not legal and proper. According to him the said decree was obtained by the present defendant no.1 in

collusion with present defendant nos.2 to 4. He therefore, submitted that the order passed by the learned trial Judge be set aside and execution in Special Darkhast NO.37 of 2005 be stayed.

9. As against this the learned Advocate for the defendant no.1 supported the order passed by the learned trial Judge.

10. At the outset it must be mentioned that the present defendant no.1 has obtained a decree against Chandrabhaga Dairy Pvt. Ltd. i.e. defendant no.1 in Special Civil Suit No.22 of 2002. It is not the case of the present plaintiff that the company was not properly served. On the contrary, prima facie it appears that the suit was filed as per the provisions contained in Order 29 of CPC. Merely because the defendant nos.2 to 4 in the said suit did not resist the claim, it cannot be said that the said suit was filed by the present defendant no.1 in collusion with the said defendants.

11. The learned Judge has elaborately discussed as to how the names of the present defendant nos.2 to 4 were appearing in the balance sheet and it was never brought to the notice of the present defendant no.1 that the present defendants nos.2 to 4 were not directors or that they were wrongly impleaded in the

said suit. What is more to be noted is that even now, the defendant no.1 i.e. company against whom a decree has been passed has not challenged the said decree by filing the appeal. But the present plaintiff has filed this suit in her individual capacity. There is absolutely nothing on record to indicate that the decree passed in Special Civil Suit No.22 of 2002 was illegal or incorrect. When such is the position it would be not proper to restrain the defendant no.1 from executing the said decree and thereby depriving him from getting the fruits of the said decree.

12. It is pertinent to note that present plaintiff had in fact filed an application in the execution proceedings wherein she had raised similar contentions. However, all those contentions have been negatived by the executing court and her application to stay the proceedings or not to execute the decree against the company was rejected. There is nothing on record to show that the present plaintiff has challenged the said order of rejection of her application in any superior court. Thus, it is very clear that instead of following proper recourse provided in law, the plaintiff is in fact trying to stay the execution by hook or crook. It only shows that with an intention to delay the execution proceedings and consequently the payment, the plaintiff has filed the present application. So, the

learned trial Judge has rightly observed that the plaintiff has failed to make out any prima facie case to show that the decree obtained in Special Civil Suit No.22 of 2002 was illegal or incorrect or it was collusive decree. He has also held that balance of convenience is not in favour of the plaintiff.

13. There is nothing on record to show that the order passed by the learned trial Judge is illegal, arbitrary or capricious. There is no reason to interfere with the said order in the present appeal. Hence the appeal is dismissed.

(S.R.SATHE,J.)